

Decision 02-06-014 June 6, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E-3338-E) for Authority to Institute a Rate Stabilization Plan With a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U-39-E)

Application 00-11-056
(Filed November 22, 2000)

Petition of The Utility Reform Network for Modification of Resolution E-3527.

Application 00-11-028
(Filed October 17, 2000)

O P I N I O N

This decision awards the Golden State Power Cooperative (GSPC) \$17,019.54 in compensation for contributions in applications that led to Order Instituting Investigation (OII) 01-04-002.

1. Background

GSPC's request is for the time and expenses that GSPC devoted to three applications (captioned above) that GSPC claims helped to shape the goals and objectives of the Commission's OII. While our order today grants much of the compensation sought, we caution GSPC to carefully segregate its time and costs devoted to the application from any time and costs incurred in participating in the OII.

In the applications, GSPC advocated a fundamental reevaluation of the rules governing the relationship between holding companies of Southern California Edison Company (Edison) and Pacific Gas and Electric Company (PG&E). The OII ultimately adopted by the Commission requires a review of the holding company conditions in place for each investor-owned utility, including a going-forward evaluation of changes in the existing rules to address problems in the utilities' relationships with their parent holding companies.

GSPC was an active participant in the applications, representing issues of concern to its members. GSPC reviewed and analyzed the evidentiary record, including the utilities' proposed rate increases and their respective holding companies' financial data. In its briefs, GSPC urged the Commission to examine whether holding company structures were appropriate for PG&E and Edison. In particular, GSPC argued that the Commission should reexamine the relationship between these utilities and their respective holding companies to determine whether to revisit exemptions for both Edison and PG&E from regulation under the Public Utilities Holding Company Act of 1935. These positions were incorporated in the language of the Holding Company OII (I.01-04-002, at 3, 18-19).

On April 20, 2001, Administrative Law Judge Walwyn ruled that GSPC was eligible for an award of compensation. The ruling established that GSPC qualified as a "customer" (*see* Pub. Util. Code § 1802(b)), and that it need only demonstrate significant financial hardship, as defined under Pub. Util. Code § 1802(g), preparatory to its filing for an award of compensation.

GSPC serves as a statewide, non-profit support organization for its members and, among other things, coordinates power purchasing efforts between its members. It is an umbrella cooperative that consists of five separate

cooperatives, which in turn represent members of varying size and interests. GSPC represents Anza Electric Cooperative, with 3,500 residential and small commercial customers; California Electric Users Cooperative, with 17 agricultural cooperatives and 2,633 individual members; the California Oil Producers Electric Cooperative, with 42 independent oil producers; Plumas-Sierra Rural Electric Cooperative, with 6,480 customer members in rural Northeastern California; and Surprise Valley Electrification Corporation, with 5,788 customers in Northeastern California. Although GSPC members were served under a direct access service contract until December 2000, today they are all bundled service customers of Edison or PG&E.

2. Financial Hardship

Under Pub. Util. Code § 1802(g), “significant financial hardship” is established when an applicant shows that

“the customer cannot afford, without undue financial hardship, to pay the costs of effective participation, including advocates’ fees, expert witness fees and other reasonable costs of participation, or in the case of a group or organization, the economic interests of its individual members of the group or organization is small compared to the cost of effective participation.”

Since GSPC is an organization, the Commission determines significant financial hardship by reviewing the annual utility bills of the individual members to determine whether the costs of effective participation is great in comparison to the economic interest of any of the individual members. The Commission has previously found that where individual members have annual utility bills of less than \$50,000, their economic interest is small in comparison to the costs of participation. (*See, Request for Compensation of Agricultural Energy Consumers Association, Decision (D.) 95-02-093.*)

In addition, Pub. Util. Code § 1812 provides that an association that represents the interests of small agricultural customers, as does GSPC, shall not be deemed ineligible for compensation solely because the association has members who are large agricultural customers.

Exhibits attached to the request for compensation show that GSPC has a total of 18,443 individual members and, of these, 18,223 have annual utility bills of less than \$50,000. The remaining 220 members have annual utility bills in excess of \$50,000 and 18 of those have annual utility bills of more than \$500,000. As we have done in the past, we conclude that those customers with annual electric bills of less than \$50,000 have economic interests that are small in comparison to the cost of effective participation. Participation by GSPC without an award of compensation would impose a significant financial hardship as defined in Pub. Util. Code § 1802(h).

We find it reasonable to use a proxy to allocate GSPC's costs and allocate these costs on a per-member basis. Therefore, GSPC is eligible to recover 98.8% (18,223/18,443) of its cost of effective participation, and we have made that adjustment in the award granted. (*See* D.95-02-093; D.98-02-099.)

3. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file an NOI within 30 days of the prehearing conference or by a date established by the Commission. GSPC's NOI filing was timely. Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the

customer's substantial contribution to the hearing or proceeding."

Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

In this proceeding, GSPC presented an analysis of the current state of regulation of holding company practices, and this information helped launch the current OII. It urged the Commission to consider changes to the companies'

corporate structures as an alternative to the conditions and regulations requiring extensive Commission oversight. These positions became issues included in the scope of the Holding Company OII. The Commission also stated that it will investigate whether dividend payments paid by utilities to their parent holding companies violated conditions imposed in Commission holding company decisions as well as Sections 451 and 7987 of the Public Utilities Code. This was the position articulated by GSPC.

GSPC has demonstrated that it made a substantial contribution to the Commission's deliberations in these proceedings, leading to OII 01-04-002. While the organization's economic interest in this proceeding is difficult to quantify (largely due to the fact that until recently GSPC members were direct access customers), it is undisputed that GSPC members and the general public will benefit from the business certainty and rate stability that may be provided in the future rate treatment and regulation of utilities on a going-forward basis.

5. The Reasonableness of Requested Compensation

GSPC requests compensation in the amount of \$19,689.71. Documentation attached to the request shows the following compilations:

Diane M. Grueneich:

5.35 hours @ \$220	\$1,002.50
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Irene K. Moosen:

65.75 hours @ \$185	\$12,163.75
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Kelly R. Tilton:

13 hours @ \$125	\$1,625.00
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Richard McCann:

28.25 hours @ \$150	\$4,237.50
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Other:

Copies	\$276.06
Postage, FAX	289.33
Parking, tolls, mileage	95.57

Total: **\$19,689.71**

6. Hours Claimed

GSPC has maintained detailed records of time spent on the proceeding. Summaries of hours and direct expenses are set forth in an attachment to the compensation request. Time claimed is separated into professional hours, travel and compensation request hours. GSPC also appropriately breaks down time spent on various issues and activities. A total of 21 hours is claimed for preparation of the compensation request, but all of those hours have mistakenly been billed at a professional rate, rather than half the rate, which we require for preparation of compensation requests and travel time. We have made that adjustment. The 21 hours devoted to the compensation request is somewhat higher than what we are accustomed to seeing (compare 13.7 hours by California Association of the Deaf in Rulemaking 00-05-001; 9 hours by The Utility Reform Network in Application 00-05-024). Even allowing for a learning curve in GSPC's case, we find it appropriate to reduce the preparation time by 4 hours (Tilton). With these adjustments, GSPC's requested award is reduced by \$2,463.46 (*i.e.*, to \$17,226.25). Apart from these adjustments, we find the compilation of hours claimed to be reasonable.

6.1 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services." GSPC seeks an hourly rate of \$150 for technical consultant Richard McCann, a partner in M. Cubed, which specializes in environmental and energy resource economics and policy. GSPC seeks hourly

attorney rates for the retention of Grueneich Resource Advocates, including \$220 for principal Dian M. Grueneich, \$185 for Senior Associate Irene K. Moosen, and \$125 for Junior Associate Kelly R. Tilton. The rates claimed are in line with, or below, the rates charged by comparable experts and attorneys. They reflect below-market rates offered to GSPC in light of its non-profit status. We note that Moosen has over 13 years of energy and regulatory legal experience, including appearances before the Federal Energy Regulatory Commission. Grueneich has more than 20 years of experience in the field of energy and regulatory law, and Tilton has been practicing law for three years. We find that the rates requested are reasonable.

6.2 Other Costs

GSPC claims \$660.96 for costs relating to photocopying, postage, facsimile reproduction and telephone costs. We find this request reasonable.

7. Award

With the adjustments described above, we award GSPC \$17,019.54 for contributions in these proceedings that led to OII 01-04-002. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after GSPC filed this compensation request (August 15, 2001) and continuing until each utility makes full payment.

8. Waiver of Comment Period

This is a compensation matter. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

9. Allocation of Award

The award granted today should be paid equally by Edison and PG&E, since they were the only two utilities involved in those applications. Each of these utilities shall pay \$8,509.77, plus interest, to GSPC.

Findings of Fact

1. GSPC timely requests compensation for contributions to applications leading to OII 01-04-002 as set forth herein.
2. GSPC requests hourly rates for consultant and legal work that are comparable to, or less than, rates awarded to others of similar experience and training.
3. The miscellaneous costs incurred by GSPC in this proceeding are reasonable.

Conclusions of Law

1. GSPC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. The amount sought for preparation of the compensation request should be reduced by a total of \$2,670.17.
3. GSPC should be awarded \$17,019.54 for contributions to OII 01-04-002 in this proceeding.
4. This order should be effective today.

O R D E R

IT IS ORDERED that:

1. Golden State Power Cooperative (GSPC) is awarded \$17,019.54 as set forth herein for substantial contributions in proceedings that led to Order Instituting Investigation 01-04-002.

2. Pacific Gas and Electric Company and Southern California Edison Company, within 30 days of the date of this order, shall each pay GSPC \$8,509.77 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning August 15, 2001, and continuing until full payment has been made.

This order is effective today.

Dated June 6, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners